IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7737 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN
and
MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

TULSIRAM RAMDAS

Versus

GENERAL MANAGER

Appearance:
MR MUKUL SINHA for Petitioner
MR JJ YAJNIK for Respondent No. 1, 3
MR BHARAT T RAO for Respondent No. 2

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 28/04/98

ORAL JUDGEMENT

(Per : Panchal,J.)

In this petition, which is filed under Articles

226 & 227 of the Constitution, the petitioner has prayed for issuance of a writ of mandamus to respondent no.1 to comply with the award dated June 15, 1992 rendered by the Central Industrial Tribunal in Reference (ITC) no.11 of 1984, by which respondent no.1 is directed to reinstate the petitioner in service with 60% backwages and pay Rs.1000/- to Union by way of costs of Reference. Another prayer made by the petitioner is to quash and set aside order dated August 19, 1996 passed by the Central Administrative Tribunal, Ahmedabad in O.A.no.887 of 1996 by which prayer made by the petitioner to direct respondent no.1 to implement the award passed by the Central Industrial Tribunal is rejected. The petitioner has also claimed that respondent no.2 should be directed to prosecute respondent no.1 for refusing to comply with the award dated June 15, 1992 rendered by the Central Industrial Tribunal in Reference (ITC) no.11/84.

2. The petitioner was appointed as a Khalasi in the Western Railway in the year 1964 and posted at Nandurbar. He was initially transferred to Amalner on November 26, 1971. Thereafter the petitioner was transferred to Vyara by order dated May 24, 1972 as a Water Fitter Khalasi and directed to discharge duties under the Inspector of Works Vyara. The petitioner was not provided with duty pass so as to enable him to report for duty at Vyara from Amalner. Even then the petitioner presented himself for duty at Vyara, but he was not given any work on the ground that there was no vacancy of Water Fitter at Vyara. The petitioner was kept idle for a long period. Thereafter the petitioner was served with a chargesheet alleging that he had not carried out the instructions of his superior. Departmental inquiry was held against the petitioner and at the conclusion of the departmental inquiry, the petitioner was removed from service by an order dated November 9, 1973. Feeling aggrieved by the said order, the petitioner had preferred an appeal before the appellate authority. The appellate authority had quashed disciplinary proceedings and set aside the order terminating services of the petitioner. The petitioner was,however, served with order dated February 22, 1975 by which he was placed under suspension with retrospective effect from November 9, 1973. It is claimed by the petitioner that he was not paid any subsistence allowance. No wages whatsoever had been paid to the petitioner throughout the period after he was transferred to Vyara. After suspending the petitioner from service, a fresh chargesheet was issued to the petitioner and another departmental inquiry was instituted. The petitioner had approached the Conciliation Officer under

the Industrial Disputes Act, 1947 and at that time he had learnt that respondent no.1 had once again terminated his services. The petitioner, therefore, raised dispute which was referred to the Central Industrial Tribunal for adjudication.The reference was registered as Reference (ITC) no.11/84. The petitioner submitted his statement of claim to which reply was filed by respondent no.1. After taking into consideration the evidence led by the parties, Central Industrial Tribunal allowed the Reference partly. The operative part of the Tribunal's order reads as under :-

"This reference is allowed partly. The General Manager of the first party Western Railway, Bombay is ordered to reinstate the concerned workman Shri Tulsiram Ramdas on his original position with continuity of service and pay him 60% of the back wages. This award is to be implemented after one month's time from the date on which this award is published by the Labour Ministry, Government of India. It is ordered that Rs.1000/- should be paid to the Union towards the cost of this reference."

3. The Central Industrial Tribunal had made award on June 15, 1992, but copy of the award was sent to the representative of the petitioner only in the month of March, 1994 and along with the copy, notification for publication was not sent. The representative of the petitioner had, therefore, met the Registrar of Central Industrial Tribunal personally on April 14, 1994, who had given him a copy of notification dated June 30, 1992. A copy of the award passed by the Central Industrial Tribunal is produced by the petitioner at Annexure-I to the petition. Thereafter, a notice dated October 4, 1994 was served on the respondent no.1 by registered post A.D. calling upon him to implement the award. A copy of notice dated October 4,1994 is produced by the petitioner at Annexure-II to the petition. The petitioner has also claimed in the petition that he personally met the Senior Personnel Officer of Western Railway at Bombay Central and requested him to reinstate the petitioner in service as per the order of the Tribunal, but the Senior Personel Officer refused to comply with the directions given by the Tribunal. The petitioner thereafter filed M.C.A.no. 271/95 in the High Court under the provisions of the Contempt of Courts Act, 1971. The petitioner has averred in the petition that the said application is admitted and is pending for final disposal, but petitioner has hastened to add that the application filed by the petitioner under the provisions of Contempt of Courts Act, 1971 is not likely to be entertained in view of the judgment of Gujarat High Court which has taken the view

that Labour Court is not a Court within the meaning of Contempt of Courts Act. The petitioner made an application to respondent no.2 and also to the Secretary, Ministry of Labour, Government of India as well as Assistant Commissioner of Labour (Central) at Ahmedabad on March 12, 1996 and requested them to prosecute respondent no.1 under section 29 of the Industrial Disputes Act, as respondent no.1 had committed breach of award of the Central Industrial Tribunal, dated June 15, 1992. A copy of application dated March 12, 1996 is produced by the petitioner at Annexure-III to the petition. It is an admitted position that respondent no.2 has not taken any action whatsoever to prosecute respondent no.1.

4. Under the circumstances, the petitioner moved Central Administrative Tribunal by way of filing O.A.no. 887/96 and prayed the Tribunal to direct respondent no.1 to permit the petitioner to discharge his regular duties and to make payment of wages including backwages in terms of directions of the Industrial Tribunal. This application was filed before the Tribunal on the basis that the award of the Industrial Tribunal has become final between the parties. The Central Administrative Tribunal, however, rejected the Original Application by order dated August 19, 1996 on the ground that it has no jurisdiction to execute the award passed by the Central Industrial Tribunal. The Tribunal opined that the petitioner should prosecute the remedies available to him under the provisions of the Industrial Disputes Act. A copy of order passed by the Central Administrative Tribunal is produced by the petitioner at Annexure-IV to the petition, which has given rise to the present petition. The petitioner has averred in the petition that refusal on the part of respondent no.1 to comply with the directions contained in the award of the Central Industrial Tribunal inspite of the fact that the said award has become final and binding between the parties in view of the provisions of Sections 17(2), 17A and 18 of the Industrial Disputes Act, is unreasonable and, therefore, necessary directions should be issued by the Court to respondent no.1 to comply with the award dated June 15, 1992 rendered by the Central Administrative Tribunal in Reference (ITC) no. 11/84. The petitioner has also made grievance against inaction on the part of respondent no.2 in not initiating proceedings for prosecuting respondent no.1, even though a statutory duty is cast on respondent no.2 to prosecute respondent no.1 under section 29 of the I.D.Act. The petitioner has, therefore, filed the present petition and claimed reliefs to which reference is made earlier.

5. The matter was placed for admission hearing before the Court on December 18, 1997 and after hearing the learned Counsel for the petitioner, the Court (Coram : C.K.Thakker & R.P.Dholakia,JJ>) issued notice making it retunable on January 15, 1998. Thereafter rule came to be issued on March 19,1998 making it returnable on March 27, 1998.

6. Though the respondents are duly served, no reply affidavit has been filed by any of them controverting the averments made in the petition.

7. It was pleaded on behalf of respondent no.1 that alternative remedy is available to the petitioner under sections 29 and 33-c(2) of I.D.Act and, therefore, the petition should not be entertained. In our view, respondent no.1 having shown scant respect to the award of the Tribunal and having failed to fulfil his obligation under the award, is not entitled to raise the plea of availability of alternative remedy and he is not entitled to contend that the petitioner should be non-suited for his alleged failure to avail the alternative remedy. It is well settled that the rule of not entertaining writ petition under Article 226 or 227 in a case where equally efficacious alternative remedy is available, is a rule of self-imposed restraint and a rule of caution. It is not a rule of law nor it is a rule of thumb, which can be applied in every case to non-suit a petitioner irrespective of the nature of his grievance. Whenever an objection is raised by a respondent to the maintainability/entertainability of petition on the ground of availability of alternative remedy, the Court has to find out as to what is the nature of grievance made by the petitioner and what type of remedy is available to him. The Court cannot be too oblivious to its constitutional duty towards the citizens because time has come when the people have started feeling that they have been let down by the two organs of the State and they look upon the Courts with a ray of hope. Moreover, the Apex Court has given wider meaning to the term "life" and right to livelihood has been recognised as a part of right to life guaranteed by Article 21 of the Constitution. The Court cannot shut its eyes from the reality that in our country public employment is an important source of livelihood to individuals. If the Courts have safeguarded the right to speech and expression, the right to business, the right to property, the right to form association, it cannot be oblivious and ignorant of the rights of millions who are deprived of the source of livelihood by arbitrary, capricious and

whimsical actions. The Court cannot throw out a petition merely because it has been filed by a small man by declaring that he has an alternative remedy. Even otherwise, remedy under sections 29 & 33-C(2) of the Industrial Disputes Act, 1947 cannot be considered as equally efficacious alternative remedy which could be made a ground to deny relief to the petitioner under Article 226 of the Constitution. Mere prosecution of the defaulting party or even his conviction under section 29 of the Act does not give any tangible relief to the workman. Moreover, Government may in a given case sanction the prosecution of defaulting party and in another case, it may refuse to sanction the prosecution and yet in another case it may not pass any order on the application filed by the workman. In the last eventuality, the workman will have to seek an appropriate relief from the High Court under Article 226 of the Constitution for issuance of direction to the Government to decide his application. It is thus evident that the petitioner cannot avail any remedy as a matter of right so far as section 29 of the Industrial Disputes Act is concerned. This all shows that the so-called remedy by way of punishment under section 29 depends upon the proper exercise of the discretion by the Government. The very vesting of power to prosecute in Government or its delegate under section 34 of I.D.Act considerably reduces the efficacy of the so-called remedy. It is legitimate to take judicial notice of the tardy and long procedure which has to be undergone before an application under section 29 is decided. Even if the employer is prosecuted and ultimately convicted for non-compliance of the award, the workman does not get any real relief because the Act of 1947 does not vest power in the Court which punishes the employer under section 29 to order reinstatement of the workman in compliance of the award. Therefore, remedy under section 29 of I.D.Act cannot be termed as efficacious alternative remedy at all.

8. Likewise, the only relief which the workman can get by making an application under section 33(c)(2) of the Industrial Disputes Act, 1947, is in the form of an order for payment of his wages. While exercising that power under that section the Labour Court cannot force the employer to take the employee on duty. If at all the workman succeeds in getting an order under section 33(c)(2) of the Act, there is no guarantee that such order will be implemented with a sense of urgency. If the order is not complied with, the maximum the Labour Court can do, is to send the order for recovery of money in the form of land revenue. It will then be for the administrative authorities to take steps for enforcing

the recovery. Any unscrupulous employer will easily manage non-execution of the recovery orders and the workman shall have to knock the doors of the High Court under Article 226 of the Constitution. Having regard to the scheme of Sections 29 & 33(c)(2) of the Industrial Disputes Act, 1947, it cannot be said that remedies available to the workman under those provisions are equally efficacious alternative remedies so as to entitle the Court to deny the relief to the aggrieved workman. Even otherwise whether remedy under sections 29 and 33(c)(2) of the Industrial Disputes Act, 1947 is efficacious or not has to be taken on the basis of the facts of each case. In the present case, the award has become final since 1992 though published, respondent no.1 has not even challenged the same. Further the petitioner has already reached the age of superannuation by now and he is not even keeping good health. Further he has already approached this Hon'ble Court and CAT and has not been able to get justice. Hence, in view of peculiar facts, it is held that petitioner does not have efficacious remedy at all. Thus, there is no substance in the argument of the learned Counsel for the respondents that the petition should be dismissed on the ground of availability of the alternative remedy.

9. Admitted facts, which have come on record, show that after contest by the respondent no.1, the Tribunal upheld the claim of the petitioner about the invalidity of the action taken by the respondent no.1. The Tribunal unequivocally held that the termination of service of the petitioner was neither justified, nor legal. On the basis of this conclusion, the Tribunal directed reinstatement of the petitioner with continuity of service and 60% of the backwages. The respondent no.1 did not challenge this award before the High Court under Article 227 or before the Supreme Court under Article 136 of the Constitution. The petitioner submitted an application to respondent no.1 requesting him to permit the petitioner to discharge duties and pay the backwages, but respondent no.1 has not permitted the petitioner to resume duties, nor paid the backwages. The petitioner made an application to respondent no.2 to prosecute respondent no.1 under section 29 of the Industrial Disputes Act, but no action worth the name has been taken by the respondent no.2 at all. The effort made by the petitioner to get executed the award of the Central Industrial Tribunal through Central Administrative Tribunal has also failed. All his efforts have proved futile. Hence the present petition seeking mandamus to comply with the award of the Central Industrial Tribunal is filed.

10. The award passed by the Industrial Tribunal has become final and under the award, a legal right is conferred on the petitioner to be reinstated in service with benefit of 60% of backwages and a corresponding obligation is imposed on the respondents to take steps to implement the award. Once the award passed by the Tribunal acquired finality, it was the bounden duty of the respondent no.1, to not only act in accordance with the award and fulfil his obligation under the award, but also to take all necessary steps to translate the award into reality. As pointed out earlier, respondent no.1 has not cared to file any affidavit-in-reply to the present petition. Total absence of justification for not implementing the award justifies the conclusion that respondent no.1 has failed to carry out his duty, resulting into clear infringement of legal right of the petitioner. Therefore, the petitioner has a right to seek a writ of mandamus against respondent no.1.

11. Consequently, the writ petition is allowed. Respondent no.1 is directed to implement the award dated June 15, 1992 rendered by the Central Industrial Tribunal in Reference (ITC) no.11/84 within a period of two months from the date of receipt of writ. The petitioner shall be paid backwages in terms of award within two months from the date of receipt of writ. If the backwages are not paid within two months, the petitioner will be entitled to get interest on the arrears at the rate of 12% per annum from the date of award. As far as reinstatement in service is concerned, during the course of argument, it has been pointed out by both the parties that the petitioner has already crossed the age of superannuation. Hence, respondent no.1 shall pass order notionally reinstating the petitioner on duty with continuity of service as if the order of termination has not at all been passed. Actual reporting of duty obviously shall not be insisted upon by the respondent no.1. It is further directed that pensionary and other terminal benefits which have become due on his superannuation shall also be worked out and paid to the petitioner within a further period of six months. Looking to the health of the petitioner, it is directed that respondent no.1 shall not default in implementing the direction given by us and it is hoped that petitioner will not be required to knock the doors of the Court again. The petitioner shall get cost of the petition which is quantified at Rs.3000/-. Rule is made absolute accordingly.

12. Before concluding, we wish to mention that the

present case paints a grim picture of the working of Office of Regional Commissioner of Labour (Central), Government of India at Ahmedabad. After the award was rendered by the Central Industrial Tribunal, the petitioner had made an application dated March 12, 1996 to respondent no.2 requesting him to initiate prosecution against respondent no.1 as contemplated by section 29 of the I.D.Act, but no action worth the name has been taken by the respondent no.1 on the application of the petitioner. Total lack of lethargy shown by the Regional Labour Commissioner speaks clearly of the perception with which the officer concerned has discharged his duties of the office which he holds. It is hoped that the respondent no.2 would wake up from his slumber and discharge his functions in the true spirit expected of him while administering the provisions of the Industrial Disputes Act, 1947.

Office is directed to send writ to all the respondents forthwith.

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